

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

MICHAEL ALFRED MAESTREY, )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                             ) CIVIL ACTION NO. 5:17-CV-68 (MTT)  
                                  )  
                                  )  
Warden GLEN JOHNSON, et al., )  
                                  )  
Defendants.                    )  
                                  )

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**ORDER**

United States Magistrate Judge Stephen Hyles denied Plaintiff Michael Alfred Maestrey's motion to appoint counsel and recommended denying the Plaintiff's Emergency Motion for Injunctive Relief (Doc. 9). See generally Doc. 10. The Plaintiff has objected to both. See generally Doc. 11. Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Plaintiff's objection and has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects. The Court has reviewed the Recommendation, and the Recommendation is **ADOPTED** and made the order of this Court.

**I. The Plaintiff's Motion for Reconsideration**

The Court construes the Plaintiff's objection to the denial of his motion to appoint counsel as a motion for reconsideration. See *id.* at 2-4. Pursuant to 28 U.S.C. § 636(b)(1)(A), this Court "may reconsider any pretrial matter [decided by the Magistrate Judge] . . . where it has been shown that the [M]agistrate [J]udge's order is clearly erroneous or contrary to law." See also *Brown v. United States*, 748 F.3d 1045, 1055

(11th Cir. 2014); *Muhammad v. HSBC Bank UNSA, N.A.*, 399 F. App'x 460, 462 (11th Cir. 2010). Here, the Plaintiff has not made either of these showings, and, thus, his Motion for Reconsideration is **DENIED**.

## **II. The Plaintiff's Motion to Amend**

To the extent the Plaintiff attempts to plead new facts in support of his Emergency Motion for Injunctive Relief (Doc. 9), the Court construes this as a motion to amend. *Newsome v. Chatham Cty. Det. Ctr.*, 256 F. App'x 342, 344 (11th Cir. 2007). The Court has discretion to grant or deny such a motion. *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) (“[A] district court has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate judge.”); *Stephens v. Tolbert*, 471 F.3d 1173, 1176 (11th Cir. 2006) (holding a district court does not abuse “its discretion when it accepts an argument that had not been presented to the magistrate judge.”). Accordingly, the Plaintiff’s motion to amend is **DENIED**.

Even considering his new factual allegations, the Plaintiff still fails to meet his burden of proving the elements required for a preliminary injunction. Of the newly alleged facts, two issues merit discussion. First, the Plaintiff states an injunction is necessary to prevent “real and present danger to [his] life.” Doc. 11 at 7. The Plaintiff gives several examples of this, including how he has been targeted by gang members. *Id.* at 6-7. However, while he does appear to face danger from gang members if he were to transfer from protective custody to general population, the Plaintiff has not alleged facts suggesting that the Defendants are currently considering transferring him. Indeed, the Plaintiff admits that he is “currently housed in a segregation cell (J-2-242) on (PC) protective custody status.” *Id.* at 4. Thus, the Plaintiff’s current housing

situation appears to be as safe as it possibly could. Second, the Plaintiff now “seeks injunctive relief to prohibit Defendants from committing ‘Diesal Therapy’ . . . i.e., transferring Plaintiff to another prison in an effort to thwart *these* proceeding[s].” (emphasis added). *Id.* But the Plaintiff has not shown how a transfer would affect his prosecution of the case. Thus, an amendment to the Plaintiff’s Emergency Motion for Injunctive Relief would be futile.

### **III. Conclusion**

The Court has reviewed the Recommendation, and the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the order of this Court. Accordingly, the Plaintiff’s Motion to Appoint Counsel (Doc. 7) and Emergency Motion for Injunctive Relief (Doc. 9) are **DENIED**.

**SO ORDERED**, this 12th day of September, 2017.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT